

October 15, 2019

Electronically submitted via www.regulations.gov

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Comments of Southern Company on Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles; 84 FR 40353 (August 14, 2019)

Dear Administrator Wheeler,

Southern Company appreciates the opportunity to offer comments in response to the Environmental Protection Agency's (EPA) August 14, 2019, Federal Register notice seeking public input regarding EPA's proposed rulemaking to amend the Coal Combustion Residuals (CCR) Rule. These comments are submitted on behalf of Southern Company and the following subsidiaries, which own and operate CCR disposal units: Alabama Power Company, Georgia Power Company and Mississippi Power Company.¹ Accordingly, throughout this letter, references

¹ Southern Company is a leading energy company serving 9 million customers through its subsidiaries as of Jan. 1, 2019. The company provides clean, safe, reliable and affordable energy through electric operating companies in three states, natural gas distribution companies in four states, a competitive generation company serving wholesale customers across America, a leading distributed energy infrastructure company, a fiber optics network and telecommunications services. Southern Company brands are known for excellent customer service, high reliability and affordable prices below the national average. For more than a century, we have been building the future of energy and developing the full portfolio of energy resources, including carbon-free nuclear, advanced carbon capture technologies, natural gas, renewables, energy efficiency and storage technology. Through an industry-leading commitment to innovation and a low-carbon future, Southern Company and its subsidiaries develop the customized energy solutions our customers and communities require to drive growth and prosperity. Our uncompromising values ensure we put the needs of those we serve at the center of everything we do and govern our business to the benefit of our world. Our corporate culture and hiring practices have been recognized nationally by the U.S. Department of Defense, G.I. Jobs magazine, DiversityInc, Black Enterprise, Forbes and the Women's Choice Award. To learn more, visit www.southerncompany.com.

to Southern Company's operations and contracts related to CCR intended for beneficial use refer to operations conducted through and contracts entered into by its subsidiaries.

The majority of EPA's proposed rulemaking focuses on beneficial use of CCR. Southern Company promotes the safe and environmentally responsible beneficial use of CCR by targeting applications that EPA has thoroughly evaluated² and binding purchasers by contract to use these products only for intended purposes. Most of the CCR sold for beneficial use by Southern Company is for encapsulated use in the wallboard, cement and concrete industry.

Production of CCR is declining as generation from coal plants continues to trend downward. In 2018, coal represented only 27 percent of our energy mix as compared to 69 percent in 2007. Southern Company has recently stopped sending coal ash to unlined impoundments. As a result of declining CCR production and evolving on-site management practices, CCR currently stored in landfills and impoundments now represents an inventory of CCR that, if economically feasible, market-viable and in the best interest of customers, could be leveraged for beneficial use. We anticipate continued focus and research on innovative, safe and responsible beneficial use practices and acknowledge as well as appreciate EPA's historical partnership with stakeholders in developing and promoting these practices.

In addition to future beneficial use opportunities, Southern Company also anticipates continued dialogue with EPA regarding state CCR permit programs. EPA has published a proposed partial approval of Georgia's state CCR permit program³, and Alabama has developed a state permit program for EPA's review and consideration. As primary regulatory oversight over CCR increasingly shifts to the state level, it is important for EPA to foster flexibility at the federal level and promote adoption of site-specific criteria that are "at least as protective as" the federal rule.

We encourage EPA to establish CCR regulations that appropriately address risk and are based on sound science; reflect the current regulatory landscape and promote both regulatory certainty and cooperative federalism; and preserve flexibilities needed to ensure accuracy and consistency in data reporting. In the remainder of this letter, Southern Company offers more specific

² US EPA, 2014. *Coal Combustion Residual Beneficial Use Evaluation: Fly Ash Concrete and FGD Gypsum Wallboard*. Office of Solid Waste and Emergency Response and Office of Resource Conservation and Recovery. Washington, DC. Available online at https://www.epa.gov/sites/production/files/2014-12/documents/ccr_bu_eval.pdf

³ 84 Fed. Reg. 30977

comments to EPA regarding revision of the fourth criterion, regulation of CCR storage piles, a risk-based groundwater protection standard for boron and groundwater data reporting requirements.

1. EPA should limit any potential modifications of the fourth criterion to structural fill project applications and explicitly exclude use of FGD gypsum in agriculture from the fourth criterion.

If EPA chooses to modify the fourth criterion, EPA should limit any modifications to structural fill project applications and explicitly exclude use of FGD gypsum in agriculture from the fourth criterion. Limiting any modifications to the fourth criterion to structural fills would address EPA's concerns regarding appropriate evaluation of large-scale uses (i.e., structural fill projects) without negatively impacting other unencapsulated beneficial uses. EPA has previously acknowledged that use of FGD gypsum at applicable agronomic rates would be considered legitimate beneficial use.⁴ Southern Company refers EPA to comments submitted by Electric Power Research Institute (EPRI)⁵ for more detailed discussion regarding the potential impacts of the proposed fourth criterion modifications on the use of FGD gypsum in agriculture. Southern Company supports comments submitted by American Coal Ash Association (ACAA)⁶, Utility Solid Waste Activity Group (USWAG) and others⁷ suggesting that EPA could, instead of introducing location restriction studies, revise the fourth criterion to refer users to ASTM E2277-14 as the appropriate set of considerations when assessing a structural fill project using CCR. This standard fully contemplates the possibility that environmental considerations may prohibit the use of CCR in a structural fill application.

2. EPA should avoid duplication of existing federal regulations affecting CCR storage and accommodate for practical and protective existing practices.

⁴ 80 Fed. Reg. at 21350.

⁵ Comments of the Electric Power Research Institute on Environmental Protection Agency Docket ID: EPA-HQ-OLEM-2018-0524; [EPA-HQ-OLEM-2018-0524; FRL-9997-74-OLEM]; Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles

⁶ Comments of American Coal Ash Association re: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles

⁷ Comments of The Utility Solid Waste Activities Group, The Edison Electric Institute, The American Public Power Association, and The National Rural Electric Cooperative Association on Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles Proposed Rule.

As a practical matter, the storage of CCR in piles intended for *disposal* is typically avoided. It is preferable from a practical standpoint to avoid “double-handling” of CCRs that are destined for disposal in order to conserve resources and minimize safety concerns at the site. With respect to piles intended for *beneficial use*, the proposed requirement to prove that a pile is temporary poses practical challenges. In agreement with comments submitted by USWAG and others⁸, Southern Company encourages EPA to accommodate for the common on- and off-site practice of temporarily storing CCR for beneficial use on a *rolling* basis. It would be difficult to maintain a reliable supply of product to a beneficial user if a storage pile were to be completely and repeatedly removed. We suggest that a contract with a beneficial user, which clearly demonstrates that the staging of CCR is not speculative, should suffice as evidence that the pile intended for beneficial use is temporary.

Southern Company agrees with EPA's observations that existing regulations applicable to both on- and off-site facilities effectively control releases of CCR to the environment from temporary piles and that releases specifically authorized under federal, state and local regulations for surface water, groundwater, soil or air protection would be allowed under this proposal.⁹ For this reason and for instances where CCR is managed as a useful product as opposed to a solid waste, we suggest that the proposed regulations are duplicative and potentially unnecessary. We also recommend that EPA revise its statement that releases from a pile would be considered evidence of disposal. We understand EPA's intent to discourage management practices that are so ineffective that CCR effectively escapes containment and results in an unauthorized disposal. However, this statement could be interpreted as subjecting a temporary CCR pile to landfill requirements due to minor or isolated releases that are very limited and subsequently contained.

3. EPA should not over-prescribe CCR groundwater data reporting requirements.

Southern Company appreciates clarification from EPA regarding required elements of annual groundwater monitoring and corrective action reports, but we recommend that EPA stop short of prescribing requirements that are too specific, such as table formats. Owners need flexibility in

⁸ Comments of The Utility Solid Waste Activities Group, The Edison Electric Institute, The American Public Power Association, and The National Rural Electric Cooperative Association on Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles Proposed Rule.

⁹ 84 Fed. Reg. 40363

determining how to efficiently manage and accurately present data in a way that meets all relevant regulatory requirements, communicates to multiple stakeholders and minimizes potential for error. For example, a state agency may wish to stay consistent with longstanding data presentation practices that meet the intent of the federal rule and existing state agency requirements. We encourage EPA to clarify, but not over-prescribe, the required elements of groundwater data reporting.

4. EPA should allow risk-based alternative standards under permit programs.

If EPA were to add boron to Appendix IV, Southern Company supports the establishment of a risk-based standard for boron, as opposed to use of background levels. EPA's recommendation to establish 4,000 micrograms per liter as the groundwater protection standard for boron is consistent with methods used previously to establish standards in the federal rule for lithium, cobalt, molybdenum and lead. We encourage EPA to allow permit writers flexibility to establish more site-specific alternative standards for these constituents, when appropriate, based on site-specific analyses and using current and defensible constituent-specific data. Southern Company refers EPA to comments submitted by EPRI,¹⁰ which describe a framework for establishing scientifically defensible risk-based alternatives standards.

Southern Company appreciates the opportunity to provide comment to EPA on this important rulemaking.

Sincerely,

A handwritten signature in blue ink, reading "Jeffrey A. Burleson".

Jeffrey A. Burleson
Sr. Vice President
Environmental and System Planning
Southern Company

¹⁰ Comments of the Electric Power Research Institute on Environmental Protection Agency Docket ID: EPA-HQ-OLEM-2018-0524; [EPA-HQ-OLEM-2018-0524; FRL-9997-74-OLEM]; Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles